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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,443	09/25/2003	Jeong Sik Lee	P69093US0	4278
43569	7590	09/27/2006		
MAYER, BROWN, ROWE & MAW LLP 1909 K STREET, N.W. WASHINGTON, DC 20006			EXAMINER HANEY, RICHAE LEE	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/669,443	Applicant(s) LEE, JEONG SIK	
	Examiner Richale L. Haney	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-19 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-10 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's remarks filed 9/13/2005 have been considered. Claims 1 – 19 are pending in the application.

Allowable Subject Matter

1. Claims 11 –19 are allowed.
2. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections

3. Claims 1, 2 and 4 –10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim1 of U.S. Patent No. 6,895,601 in view of Whang (US 6,199,213). Claim 1 of US patent 6,895,601 recites all elements of claims 1, 2 and 4 except for the insert of absorbent material being a mesh lining tape. Whang discloses a mesh lining tape (13, Figure 1B) and a covering material (15) sewn together with a plurality of stitching lines (11, Figure 1A; Column 3, lines 15 –18 and Column 4, lines 12 – 15). To form the insert recited in claim 1 as a mesh lining tape as suggested by Whang would have been obvious since the mesh. would provide for improved fabric breathability.

Response to Arguments

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4. Applicant's arguments filed 9/13/2005 have been fully considered but they are not persuasive.

Applicant submits that Whang reference is not commonly owned and therefore not a proper obvious-type double patenting rejection. Obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is not patentably distinct from the subject matter claimed in a commonly owned patent (US 6,895,601). The examiner cites Whang to show that the limitations, which are not expressly contained in claim 1 of the commonly owned US patent 6,895,601, would have been an obvious modification to a person of ordinary skill in the art. This rejection may be overcome by filing a terminal disclaimer.

Applicant submits that Whang does not show a covering portion and a mesh lining tape sewn together with a plurality of stitching lines interwoven in a chain-like pattern. Applicant also states that there is no disclosure that the headband includes a covering portion and a mesh lining sew together with a plurality of stitching lines interwoven in a chain like pattern. The reference teaches an inner core and outer shell, stitched together with a plurality of stitching lines interwoven in a chain like pattern. Any type of machine stitching is considered interwoven in a chain like pattern. In regard to the use of mesh as the core material, the prior art reference teaches that it is polyester, but "not limited to any specific fabric type. The method can incorporate a multitude of materials." These materials include polyester mesh. One of ordinary skill would reason that the inner core may be formed from polyester mesh, since it is one of the materials listed by Whang.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L. Haney
Patent Examiner
Art Unit 3765
September 20, 2006

RLH


GARY L. WELCH
PRIMARY EXAMINER